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February 8, 2019

By E-Mail

Amanda K. Kramer
Rebecca G. Mermelstein
Jordan Estes
Assistant United States Attorneys
U.S. Attorney's Office
Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007

Re: *United States v. David Middendorf, et al.*, 18 Cr. 36 (JPO)

Dear Amanda, Rebecca, and Jordan:

Pursuant to Rule 16(b)(1)(C)(i) of the Federal Rules of Criminal Procedure, David Middendorf, by and through the undersigned counsel, hereby provides notice of his intent to offer the expert testimony of Mr. Jim Peslis in the above-referenced case.¹

The testimony of Mr. Peslis will concern Mr. Middendorf's iPhone 8, serial number F2LRL53WGRWT (the "Middendorf Cellphone"). Mr. Peslis is a Digital Forensics and Investigations Manager at Renaissance Associates, Ltd. Mr. Peslis' 28-year career in law enforcement began with the Hanover Police Department in Morris County, New Jersey, where he conducted digital forensic investigations and was responsible for the security of the Department's technology infrastructure. In 2002, Mr. Peslis was assigned to the New Jersey State police high-tech unit, where he focused on computer forensics. He then returned to the Hanover Police Department, where he was promoted to lieutenant and oversaw the technology unit for criminal investigations. Mr. Peslis retired from the Hanover Police Department in 2016. Since that time, he has worked for Renaissance Associates in private sector investigations and digital forensic examination. Mr. Peslis holds a variety of certifications in computer and cellphone forensics, including a Cellebrite certification.

¹ This notice is being provided at this time because we only became aware of the need for this testimony within the last 24 hours.

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As you are aware, on Monday, February 4, 2019, at your office, Mr. Peslis imaged the Middendorf Cellphone and copied an image of the Middendorf Cellphone from a hard drive belonging to KPMG. Mr. Peslis has been analyzing the image he took of the Middendorf Cellphone for information related to the “Notes” files.

Based on his experience and expertise, we anticipate that Mr. Peslis will testify, among other topics, about (i) the iPhone “Notes” function generally, how iPhones “Notes” data is stored on an iPhone, and what that data does—and does not—show; and (ii) about the forensic examination of cellphones, including the use of Cellebrite and creation of Cellebrite reports. Based on Mr. Peslis’ analysis of the Middendorf Cellphone and review of the Cellebrite report currently marked as Government Exhibit 654, we also anticipate that he will testify, based on his expertise, that it is impossible to determine the substance or contents of particular “Notes” files on the Middendorf Cellphone as of the time when those “Notes” were “created,” including one “Note” that appears on GX 654 as having been “created” on January 10, 2017. With respect to GX 654 in particular, we anticipate that Mr. Peslis will testify about how such a report is generated; the definitions of various terms that appear in such a report, such as “created,” “modified,” and “deleted,” for example, and what conclusions, if any, can be drawn from the report itself and the underlying data.

Mr. Middendorf reserves the right to supplement or amend this notice as trial approaches and proceeds.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Nelson A. Boxer', with a stylized flourish at the end.

Nelson A. Boxer
Amy Lester
Alexandra R. Clark
Noam Greenspan
Petrillo Klein & Boxer LLP

- and -

Gregory S. Bruch
Khiran Sidhu
Bruch Hanna LLP

Counsel for David Middendorf